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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,182	10/16/2003	John J. Brucker	P00736-US1	7587
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BARLOW, JOSEPHS & HOLMES, LTD. 101 DYER STREET 5TH FLOOR PROVIDENCE, RI 02903				
			EXAMINER FERGUSON, MICHAEL P	
			ART UNIT 3679	PAPER NUMBER

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/687,182

Applicant(s)

BRUCKER, JOHN J.

Examiner

Michael P. Ferguson

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3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 8, 10-14 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 2-5 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 10 is objected to because of the following informalities:

Claim 10 (line 3) recites "said receiver portion". It should recite --said receiver end--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 8, 10, 14, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (US 6,413,004).

As to claim 1, Lin discloses a fence system comprising:

two spaced tubular vertical support members (formed by plurality of sections **A**), each of the vertical support members having side walls (defined by vertical support formed by plurality of sections **A**) and two vertically spaced holes **32** in one side wall **A** thereof;

rail connectors **40** configured to be received and retained in each of the holes in the support members, each of the connectors including:

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a receiver end **50**, the receiver end having shoulders **42** that contact an outer surface of the side wall of the vertical support members and extends outwardly from the side wall of the support members when the connector is assembled therewith;

an opposing pair of retention clips **53** extending from a rear surface of the receiver portion, the opposing pair of retention clips configured to extend into the hole **32** in the sidewall of the vertical support and cooperate to engage the sidewall to retain the rail connector in assembled relation; and

an opposing pair of guide pins **56** extending from a rear surface of the receiver portion, the opposing pair of guide pins contacting opposite sides of the hole, the opposing pair of guide pin configured and arranged to prevent the rail connector from rotating relative to the vertical support; and

two horizontal rails **B**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be frictionally received and retained by the receiver end of the rail connectors, wherein the two horizontal rails are supported in parallel spaced relation between the vertical support members (Figures 1,3 and 6).

As to claim 6, Lin discloses a fence system comprising:

three vertically spaced holes **32** in one side wall (defined by vertical support formed by plurality of sections **A**) of each of the vertical supports (formed by plurality of sections **A**); and

three horizontal rails **B**, each of the rails having a first end and a second end, each of the ends of the rails having openings therein, the openings configured to be

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frictionally received and retained by the receiver end of the rail connectors **40**, wherein the at three horizontal rails are supported in parallel spaced relation, one of the rails in a top position, one of the rails in a middle position and one of the rails in a bottom position between the two vertical support members (Figure 1).

As to claim 8, Lin discloses a fence system wherein the holes **32** in the side wall of the vertical supports are rectangular shaped (Figures 3 and 6).

As to claim 10, Lin discloses a fence system, the rail connector **40** comprising:  
a locking detent **56** extending from a side of the receiver end **50**, the detent configured and arranged to engage a retention hole **32** in the side of the horizontal rail **B** when the end of the rail is in assembled relation with the rail connector (Figure 1,3 and 6).

As to claim 14, Lin discloses a connector **40** for attaching vertical and horizontal members of a fencing system, the connector comprising:

a receiver portion **50**, the receiver portion configured and arranged to frictionally retain a horizontal fence support rail **B**, the receiver portion including shoulders **42** that contact an outer surface of a vertical member **A** when in assembled relation therewith;  
and

an opposing pair of retention clip **53** extending from a rear surface of the receiver portion, the opposing pair of retention clips configured to extend into a hole **32** in a sidewall of the vertical member and cooperate to engage the sidewall to retain the connector in the assembled relation; and

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an opposing pair of guide pins **56** extending from the rear surface of the receiver portion, the opposing pair of guide pins contacting opposite sides of the hole, the opposing pair of guide pins configured and arranged to prevent the rail connector from rotating relative to the vertical member (Figures 1,3 and 6).

As to claim 18, Lin discloses a fence system wherein the guide pin **56** also serves as a retention clip configured to extend into the hole **32** in the sidewall of the vertical support member **A** and engage the sidewall to retain the rail connector **40** in the assembled relation (Figures 3 and 6).

As to claim 19, Lin discloses a connector **40** wherein the guide pin **56** also serves as a retention clip configured to extend into the hole **32** in the sidewall of the vertical member **A** and engage the sidewall to retain the rail connector in the assembled relation (Figures 3 and 6).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin.

As to claim 11, Lin fails to disclose a fence system wherein the vertical supports, the rail connectors and the horizontal rails are metallic.

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The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Lin wherein the vertical supports, the rail connectors and the horizontal rails are metallic as such material is a well-known, widely used and commercially available material within the art.

As to claim 16, Lin fails to disclose a connector wherein the connector is metallic.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a connector as disclosed by Lin wherein the connector is metallic as such material is a well-known, widely used and commercially available material within the art.

6. Claims 12, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Edgman (US 5,702,090).

As to claim 12, Lin fails to disclose a fence system wherein the vertical supports and the horizontal rails are formed from a material selected from the group consisting of extruded vinyl and PVC.

Edgman teaches a fence system wherein vertical supports **16** and the horizontal rails **22,24,62** are formed from extruded vinyl or PVC; the extruded vinyl or PVC providing for a lightweight, weather resistant, durable fence system (Figure 2, column 2

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lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Lin to have vertical supports and horizontal rails formed from extruded vinyl or PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable fence system.

As to claim 13, Lin fails to disclose a fence system wherein the rail connector is formed from a polymer material selected from the group consisting of ABS, PVC, HDPE and polycarbonate.

Edgman teaches a fence system wherein the rail connector **40,52,54,66** is formed from a polymer material consisting of PVC; the PVC providing for a lightweight, weather resistant, durable fence system (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence system as disclosed by Lin to have rail connectors formed from PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable fence system.

As to claim 17, Lin fails to disclose a connector wherein the connector is formed from a polymer material selected from the group consisting of ABS, PVC, HDPE and polycarbonate.

Edgman teaches a connector **40,52,54,66** formed from a polymer material consisting of PVC; the PVC providing for a lightweight, weather resistant, durable connector (Figure 2, column 2 lines 52-60). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a



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connector as disclosed by Lin to be formed from PVC as taught by Edgman in order to provide for a lightweight, weather resistant, durable connector.

***Allowable Subject Matter***

7. Claims 2-5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 2, Lin discloses the claimed fence system with the exception of comprising a linear groove extending between the first and second ends of each of the horizontal rails; and a fence panel having a top and bottom edge, the fence panel extending between and supported by the spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the horizontal rails.

As to claim 7, Lin discloses the claimed fence system with the exception of comprising a linear groove extending between the first and second ends of each of the top and bottom horizontal rails; two linear grooves between the first and second ends of the middle rail; a first fence panel having a top and bottom edge, the first fence panel extending between and supported by the top and middle spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the top and middle horizontal rails; and a second fence panel having a top and bottom edge, the second fence panel extending between and supported by the middle and bottom spaced horizontal rails, wherein the top and bottom edges are received and retained in the grooves in the middle and bottom horizontal rails.

There is no teaching or suggestion, absent the applicant's own disclosure, for one having ordinary skill in the art at the time the invention was made to modify the fence system as disclosed by Lin to have the above mentioned elemental features.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-8,10-14 and 16-19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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